

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, July 12, 2006, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Ray Dwyer
Walter Schmidt

BOARD MEMBERS ABSENT:

SECRETARY TO THE BOARD: Sheri Mount

OTHERS PRESENT: Town of Merton Board of Adjustment
Scott Stollenwerk, BA06:044, owner
Jeff Morgan, BA06:041, petitioner
Zeta Rynders, BA06:044, neighbor
Robert & Linda Wilson, BA06:044, neighbors
Dan Steven, BA06:044, neighbors
Robert Gosma, BA06:050, owner
Steve Beres, BA06:050, petitioner
Vicki Murray, BA06:044, neighbor
Tami & Phil Swainz, BA06:044, neighbor
Steve & Bev Roberts, BA06:044, neighbor
Terry & Colleen Darling, BA06:044, neighbor
Donna W. Seeker, BA06:044, neighbor
Becky & Jim Carroll, BA06:047, neighbor
Barbara Dunn, BA06:044, neighbor
Steve & Kathy Lemke, BA06:051, neighbor
Larry Schmidt, BA06:051, owner
Debra Michelic, BA06:051, neighbor
Larry Babb, BA06:004, petitioner
Nancy Hume, BA06:004, owner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of June 28, 2006.*

The motion was seconded by Mr. Schmidt and carried 4-0. Mr. Dwyer abstained.

NEW BUSINESS:

BA06:041 HALQUIST STONE COMPANY
EMCS, Inc - Petitioner

Mr. Schmidt *I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. Detailed elevation and engineering plans for the retaining wall must be submitted to Waukesha County Planning & Zoning Division and Waukesha County Land Resources Division staff for review and approval as part of the Conditional Use Permit and Rezone approval. This means that these plans must be submitted before these items will be placed on the agenda for the Waukesha County Park & Planning Commission.
2. The Conditional Use Permit and the Rezone must be approved prior to issuance of a zoning permit for the retaining wall.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

As conditioned, the approval of this request will result in being able to eliminate wetland fill in the location of the haul road bridge. While the bridge could be constructed without the retaining wall, it would mean that the side slopes would extend into the wetland. Therefore, allowing the retaining wall will result in fewer negative impacts to the wetland as part of this overall project. The approval of this request would not be contrary to the public interest as it affords protection to the public resource by eliminating the wetland fill. Therefore, the approval of this request would be in conformance with the purpose and intent of the Ordinance.

BA06:044 SCOTT & LAURIE STOLLENWERK

Mr. Dwyer *I make a motion to adopt the staff's recommendation, as stated in the Staff Report, and for the reasons stated in the Staff Report with the following changes to the conditions of approval:*

Condition #1 shall be deleted.

Condition #2 shall be amended to read: "The Zoning Permit for a new home must be applied for by July 13, 2008. Failure to comply with this condition will be a violation of the Ordinance and appropriate legal action may be taken."

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed Certified Survey Map (CSM) must be reviewed and approved by the Town of Genesee

and the CSM must be recorded in the office of the Waukesha County Register of Deeds.

2. The Zoning Permit for a new home must be applied for within two years of the recordation date of the CSM or one year from the granting of the variance, whichever is sooner. Failure to comply with this condition will be a violation of the Ordinance and appropriate legal action may be taken.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

As conditioned, the approval of this request will result in one completely conforming and one substantially conforming property once a new residence is constructed on proposed Lot 2 of the Certified Survey Map. As conditioned, the zoning permit for the residence on Lot 2 would have to be applied for within one year of the granting of this variance or within two years of recordation of the CSM, whichever is sooner; therefore, the variance from the accessory buildings without a principal residence provision is temporary. The approval of the request for a special exception from the accessory building floor area ratio allows the owner to retain the existing historic farm buildings and preserve the rural character of the area. The approval of this request would not be contrary to the public interest, as it will substantially comply with all Ordinance requirements in the near future. Therefore, the approval of this request would be in conformance with the purpose and intent of the Ordinance.

BA06:050 R.D. GOSMA & F.A. HUESNER

John Beres Builders – Petitioner

Mr. Schultz

I make a motion to adopt the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report.

The motion was seconded by Mr. Schmidt and carried unanimously.

The staff's recommendation was for approval of the request for variances from the road setback and remodeling a nonconforming structure in excess of 50% requirement and denial of the request for a variance from the offset requirements of the Ordinance, with the following conditions:

1. Lot 154, Pretty Lake Addition Subdivision and part of Outlot E, Pretty Lake Subdivision, both owned by the petitioner, must be combined by a Certified Survey Map. The Certified Survey Map will need to be approved by the Town of Ottawa and the Waukesha County Planning and Zoning Division Staff, and recorded in the Waukesha County Register of Deeds office, prior to the issuance of a Zoning Permit.
2. The proposed garage must be located at least 15 ft. from the side lot lines, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform to the offset requirements.
3. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.
4. The proposed detached garage must be at least 11 ft. from the road right-of-way.

5. The proposed detached garage must be at least 75 ft. from the wetland boundary.
6. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed garage, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
7. Prior to the issuance of a zoning permit, a complete set of plans, in conformance with all conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. Prior to issuance of a Zoning Permit, a detailed time and materials cost estimate shall be submitted for the final, proposed project.
9. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. This grading plan may be combined with the survey required in Condition No. 6.
10. The existing shed on the west side of the road must be removed from the property prior to the issuance of a Zoning Permit for the proposed project.
11. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system, if there is one, is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff

The reasons for the recommendation, as stated in the Staff Report, are as follows:

With the two lots combined by Certified Survey Map, the petitioners would be able to construct a detached garage on the west side of the road without the need for a variances for not having a principal residence on the lot and without variances from the floor area ratio and open space requirements of the Ordinance. In addition, in order to meet the wetland setback of 75 ft. some relief from the road setback requirements must be given. However, it is possible to construct a garage that meets the offset requirements. It has not been demonstrated, as required for a variance, that denial of the requested offset variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

Granting of the 50% variance is justified, as there is not a substantially more conforming location on the property for a new residence. The existing residence is already nonconforming to road and shore setback. A new residence would still require the granting of variances from these provisions of the Ordinance. Therefore, it is reasonable to grant a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Ordinance. The proposed remodeling will not affect the existing road and shore setbacks. The approval of this request would

not be contrary to the public interest. Therefore, the approval of this request would be in conformance with the purpose and intent of the Ordinance.

BA06:051 LAWRENCE F. SCHMIDT

Mr. Dwyer *I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report.*

The motion was seconded by Mr. Schmidt and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The lot line adjustment must be accomplished by a Certified Survey Map. The Certified Survey Map will need to be approved by the Town of Merton and the Waukesha County Planning and Zoning Division Staff, and recorded in the Waukesha County Register of Deeds office.
2. The lot line adjustment must be as depicted on Exhibit B

The reasons for the recommendation, as stated in the Staff Report, are as follows:

As conditioned, the approval of this request will result in two more uniform properties and does not significantly alter the dimensional requirements of either. In addition, a Certified Survey Map will clear up existing legal description discrepancies on the properties. The newly proposed lot lines will also eliminate the need for any future variances on Lot 2 as it will make the property wider at the building location. The approval of this request, as conditioned, would not be contrary to the public interest. The approval of this request would be in conformance with the purpose and intent of the Ordinance.

BA06:047 BRIAN & KAY CULLEN

Paul Schultz – Petitioner

Mr. Bartholomew *I move to adjourn the public hearing until August 23, 2006 pending the submittal of additional information regarding the sanitary issue.*

The motion was seconded by Mr. Dwyer and the motion carried 4-0. Mr. Schultz abstained as he was representing the petitioner.

The staff's recommendation was for approval, with the following conditions:

1. All existing structures (including the shed at the shoreline) must be removed from the property prior to issuance of a Zoning Permit for the new residence. The residence, attached garage, decks, and patios must be a minimum of 55.4 ft. from the 100-year floodplain elevation or the Ordinary High Water Mark of Okauchee Lake, whichever is more restrictive, with overhangs not to exceed two (2) ft. in width.
2. The proposed residence and attached garage shall not exceed a total floor area of 2,875 sq. ft. (19.5%). This includes the first and second floors (not including the basement level), any covered decks, covered patios, and/or covered porches, and the attached garage.

3. The proposed residence must not exceed three stories (including any exposed basement level), as viewed from the lake. The proposed residence and attached garage must conform to the height requirements of the Ordinance.
4. The residence must be at least 7 ft. from the western and eastern lot lines, as measured to the outer edges of the walls and any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width.
5. Any sidewalks, stairs, or walkways along the sides of the residence must be located at least three (3) ft. from the side lot lines.
6. No new or rebuilt retaining walls will be permitted within 75 ft. of the lake, unless the Planning and Zoning Division staff determines that they are necessary for erosion and sediment control. No retaining walls will be permitted within 5 ft. of the side lot lines, without approval from the Town of Merton Plan Commission and the Waukesha County Park and Planning Commission.
7. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, attached garage, any proposed decks or patios, as well as any proposed sidewalks, stairs, walkways, and/or retaining walls, as well as any existing structures (i.e. retaining walls) that are proposed to remain, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also show the field-located location of the 100-year floodplain elevation on the property.
9. In order to ensure the construction of a new residence and attached garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. This grading plan may be combined with the Plat of Survey required in Condition No. 8.
10. Occupancy shall not be permitted until municipal sewer is available to the property.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. Further, the variances from offset, floor area ratio and open space are essentially temporary, as the structures on the property, as conditioned, will be completely conforming once sewer is in place. In addition, the approval, as conditioned, will also result in the removal of the nonconforming shed at the shoreline. The shed is not necessary for reasonable use of the property and if the property owners need more storage space, they now have the opportunity to create that space in the new residence and attached garage. As recommended, a total floor area of 2,875sq. ft. (not including the basement square footage) provides a reasonable use of the property, is not unnecessarily burdensome and will permit the construction of a residence and attached

garage that will be appropriately sized for the lot, and not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA06:004 NANCY HUME

Mr. Schmidt

I make a motion to reconsider and amend the previous decision made by the Board in accordance with the Staff Memorandum dated July 12, 2006 and for the reasons stated in the Memorandum.

The motion was seconded by Mr. Dwyer and carried unanimously.

ADJOURNMENT:

Mr. Schmidt

I make a motion to adjourn this meeting at 9:18 p.m.

The motion was seconded by Mr. Dwyer and carried unanimously.

Respectfully submitted,

Sheri Mount
Secretary, Board of Adjustment